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4 Plaintiff in pro per

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08 MAY 30 AM 8:39

5 RICHARD W. WIEKING CLERK
6 U.S. DISTRICT COURT
7 NO. DIST. OF CA.

8 **FILED**

9 **MAY 30 2008**

10 UNITED STATES DISTRICT COURT

11 CLERK'S OFFICE
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE

14 NORTHERN DISTRICT OF CALIFORNIA

15 C.J.P. **SAN JOSE DIVISION**

16 James Alan Bush,) Case No.: C 08-01354 (RS) JF
17 Petitioner,)
18 v.) NOTICE OF AND PETITION FOR CLAIM
19) AND DELIVERY AGAINST RESPONDENT
20) KATHY BICKEL
21 Kathy Bickel,)
22 Respondent.) Judge Jeremy Fogel
23 _____)
24)
25)
26)

27 **NOTICE OF PETITION FOR CLAIM AND DELIVERY**

28 Plaintiff, James Alan Bush, and petitioner in the above-titled
29 action, moves this Court, in connection with the complaint filed on
30 March 10th, 2008, in this matter, to grant his petition for claim and
31 delivery against Respondent, Kathy Bickel, based on this petition, and
32 the memoranda, its declarations, and exhibits.

PRELIMINARY STATEMENT

Petitioner brings his cause of action for claim and delivery pursuant to California Code of Civil Procedure § 511.010 et seq., against, Respondent, Kathy Bickel, who lawfully acquired, but failed to return on demand, Petitioner's property.

It seeks to recover damages for the detention of petitioner's property, pursuant to Code Civ. Proc. §§ 627 and 667; and, for damages for all the detriment proximately caused by the loss of its use, pursuant to Civ. Code § 3333; and, for damages for business loss; and, an award of exemplary damages, pursuant Civ. Code § 3294.

PETITION FOR CLAIM AND DELIVERY

Plaintiff complains and for this cause of action for claim and delivery against Respondent, Kathy Bickel, alleges as follows:

PARTIES

1. Petitioner is, and at all relevant times was, a resident of the City of San Jose, County of Santa Clara, State of California.
 2. Respondent, Kathy Bickel, now is, and at all times relevant to this action was, a resident of the City of Greenwood, County of Johnson, State of Indiana, residing at 1256 Blakely Drive.

RELEVANT FACTS

3. At all times herein mentioned, Petitioner was, and still is, entitled to the possession of the following property:

 - Apple Powermac G4 (Part Number M8841LL/A) (Serial Number

1 XB3110ARN1Y) The purchase receipt is attached hereto as Exhibit
2 "A" and made a part hereof.

3 • 1 GB DDR 333 PC2700 SO-DIMM (Part Number M9594G/A) The purchase
4 receipt is attached hereto as Exhibit "B" and made a part
5 hereof.

6 • DVDs, containing audio recordings and electronic documents
7 intended to be submitted as evidence in a pending civil matter

8 • A hand-held digital recorder, which contained audio recordings
9 intended to be submitted as evidence in a pending civil matter

10 4. On or about August 15th, 2006, the above-mentioned property had a
11 combined value of \$3,500.

12 5. Petitioner is, and at all times herein mentioned was, entitled to
13 the immediate and exclusive possession of the personal property
14 described above.

15 6. On or about October 15th, 2006, Petitioner demanded the immediate
16 return of the above-mentioned property; but, Respondent Bickel
17 failed and refused, and continues to fail and refuse, to return the
18 property to the petitioner.

19 7. Respondent's act of failing to return personal property of the
20 petitioner is an act of willful interference with that property,
21 done without lawful justification, by which Petitioner, the person
22 entitled to the property, is deprived of its use and possession.

23 8. The aforementioned act of the respondent was willful, wanton,
24 malicious, and oppressive, was undertaken with the intent to
25 retaliate for the petitioner's constitutionally protected right to
26 file a lawsuit against her for the acts alleged therein, and justify

the awarding of exemplary and punitive damages in the amount of \$7,500.

DAMAGES

9. During, and as a proximate result of, Respondent's failure and refusal to return the property described herein, Petitioner suffered the loss of the use and enjoyment of said personal property.

10. Accordingly, Petitioner seeks damages in the amount of value of the property, and, the petitioner also seeks damages for all the detriment proximately caused by the loss of use of the property, in the form of interest; and, Petitioner seeks exemplary damages due to the oppressive claim requirements, which were a product of Respondent's personal animus towards Petitioner, pursuant to Civ. Code § 3294.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against the Defendant, as follows:

- An injunction ordering the return of the property described herein, pursuant to Civ. Code § 3379 and Code Civ. Proc. §§ 511.010-516.050;
 - For the value of the property converted in the sum of \$3,399, pursuant to Code Civ. Proc. §§ 627 and 667;
 - For interest at the legal rate on the foregoing sum, pursuant to Civ. Code § 3336, from and after August 15th, 2006;
 - For exemplary damages in the amount of \$7,500, or according to

1 proof, in consideration of Respondent's personal animus towards
 2 Petitioner and the length of time Respondent has detained the
 3 claimed property, pursuant to Civ. Code § 3294 (oppressive claim
 4 requirements).

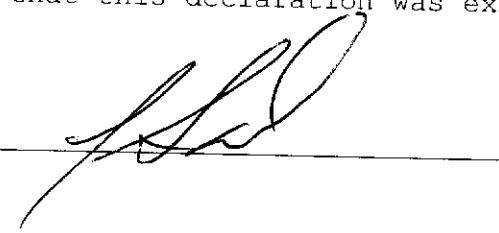
5 • For such other and further relief as the court may deem proper,
 6 including damages for the proximate and foreseeable loss resulting
 7 from Respondent's unlawful detention.

8

9 **VERIFICATION**

10 I, James Alan Bush, Petitioner in the above-entitled action, have
 11 read the foregoing and know the contents thereof. The same is true of
 12 my own knowledge, except as to those matters that are therein alleged
 13 on information and belief; and, as to those matters, I believe it to be
 14 true.

15 I declare under penalty of perjury that the foregoing is true and
 16 correct and that this declaration was executed at San Jose, California.

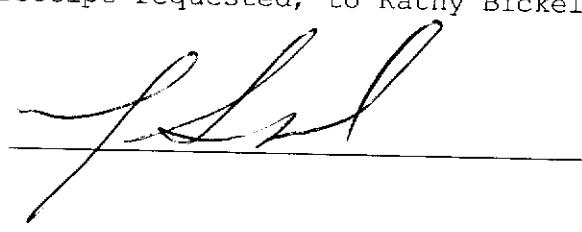
17 Petitioner: 

18 Dated: 5/29/08

19

20 **CERTIFICATE OF SERVICE**

21 A copy of the above notice of motion was mailed by certified mail,
 22 return receipt requested, to Kathy Bickel, on May 30th, 2008.

23 Signed: 

24 Dated: 5/29/08